

1937

c 221 Law Society Act

Ontario

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Bibliographic Citation

Law Society Act, RSO 1937, c 221

Repository Citation

Ontario (1937) "c 221 Law Society Act," *Ontario: Revised Statutes*: Vol. 1937: Iss. 2, Article 80.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1937/iss2/80>

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SECTION XII.

PROFESSIONS AND CALLINGS.

1. PROFESSION OF THE LAW.

CHAPTER 221.

The Law Society Act.

Interpreta-
tion.
"Society".

1. In this Act, "the Society" shall mean The Law Society of Upper Canada. R.S.O. 1927, c. 192, s. 1.

LAW SOCIETY CONTINUED.

Name.

2. The treasurer and benchers of the Society, and their successors, shall be a body corporate and politic, by the name of "The Law Society of Upper Canada," and may purchase, acquire, take by gift, bequest, donation or otherwise, for the purposes of the Society but for no other purpose, and may sell, mortgage, lease or dispose of any real or personal property. R.S.O. 1927, c. 192, s. 2.

Power as to
real estate.

Visitors.

3. The judges of the Supreme Court shall be visitors of the Society. R.S.O. 1927, c. 192, s. 3.

Members.

4. Members of the Bar of Ontario, and persons admitted to the Society as students-at-law, shall be members of the Society. R.S.O. 1927, c. 192, s. 4.

ELECTION OF BENCHERS.

Ex officio
benchers.

5. The following, if and while continuing members of the Bar of Ontario, shall, *ex officio*, be benchers of the Society:

- (a) The Minister of Justice, the Solicitor-General of Canada, and every person who has held either of those offices; R.S.O. 1927, c. 192, s. 5, cl. (a).

Minister of Justice and Solicitor-General of Canada.
- (b) The Attorney-General for Ontario, and every person who has held that office; 1930, c. 21, s. 13; 1934, c. 54, s. 14 (1).

Attorney-General for Ontario.
- (c) Every person who has for seven consecutive years held the office of treasurer of the Society;

Treasurer for seven years.
- (d) Every person who has been elected a bencher at four quinquennial elections;

Bencher Four times elected.
- (e) Every retired judge of the Supreme Court of Canada or of the Exchequer Court of Canada who was at the time of his appointment a member of the Bar of Ontario; and

Retired judge of Supreme or Exchequer Court of Canada;
- (f) Every retired judge of the Supreme Court of Ontario. R.S.O. 1927, c. 192, s. 5, cls. (c-f).

of Supreme Court of Ontario.

6. The benchers, exclusive of the *ex officio* members, shall be thirty in number, and shall be elected from the members of the Bar as hereinafter provided. R.S.O. 1927, c. 192, s. 6.

Elective benchers.

7.—(1) The benchers shall, during the month of February next preceding an election, appoint, with their assent, two members of the Bar, who, with the treasurer, shall act as scrutineers at the election, and who shall not be eligible for election to the office of bencher, and a third person, who shall be a member of the Bar and not a candidate, and assist the treasurer and act for him in his absence, in counting the votes.

Appointment of scrutineers.

(2) The treasurer may fill any vacancy in the office of scrutineer, and if he sees fit may appoint temporarily any qualified person to act as substitute for any scrutineer or other person appointed during the absence of such person. R.S.O. 1927, c. 192, s. 7.

Temporary vacancies.

8.—(1) An election shall be held on the first Thursday after the second Wednesday in April, 1941, and the subsequent elections shall be held on the first Thursday after the second Wednesday in April of every fifth year thereafter; but if the scrutineers are unable to complete the scrutiny upon such day, the same shall be continued from day to day until the election is declared.

Election, when to be held.

(2) If any scrutineer is absent during the scrutiny the others may proceed therewith. R.S.O. 1927, c. 192, s. 8.

Absence of scrutineer.

9. Every person who is a member of the Bar in good standing and not in arrears for fees to the Society shall be

Who may vote and for whom.

an elector qualified to vote for thirty persons for benchers pursuant to this Act. R.S.O. 1927, c. 192, s. 9.

List of voters.

10.—(1) The secretary shall, in the month of January, previous to the time for holding an election, make out and sign an alphabetical list of the members of the Bar who are entitled to vote at such election.

Complaints or errors in the list.

(2) Such list may be examined by any member of the Bar at all reasonable times at the office of the secretary, and if, within fifteen days after the last day of January, a member of the Bar complains to the secretary, in writing, of the improper omission or insertion of any name in the list, the secretary shall forthwith examine into the complaint and rectify the error if any there be.

Appeal to scrutineers.

(3) If any person is dissatisfied with the decision of the secretary, he may appeal to the scrutineers, whose decision shall be final, and the list shall remain or be altered in accordance with their decision, and the list as it stands on the 5th day of March shall be signed by the secretary and scrutineers and shall be the settled list of persons entitled to vote at the election.

Finality of list.

Adding persons called to the Bar in term preceding.

(4) The secretary shall add to the list the names of all persons called to the Bar after the last day of January and before the day fixed for the receipt of nomination papers, and no alteration shall be made in the list except as provided in this section. R.S.O. 1927, c. 192, s. 10.

Qualifications of benchers.

11. No person shall be eligible as a bencher at any election who is not qualified to vote at the election. R.S. 1927, c. 192, s. 11.

Retiring benchers eligible.

12. At all elections retiring benchers shall be eligible for re-election. R.S.O. 1927, c. 192, s. 12.

Nomination required.

13.—(1) No person shall be elected as a bencher unless he has been nominated as hereinafter mentioned, and every vote cast for any person not so nominated shall be void.

Nomination paper.

(2) The nomination shall be in writing by a nomination paper, which shall be signed by at least ten of the persons entitled to vote at the election.

Delivery.

(3) The nomination paper shall be delivered at the office of the secretary or sent by mail to him, so as to be received during the first fifteen days of the month of March of year in which the election is to take place, and if not delivered or received shall be invalid and shall not be upon.

(4) The secretary shall, within the first four days after the last day for the receipt of nomination papers, mail notice in writing to each nominee informing him of his nomination, but the failure to mail such notice or the non-receipt thereof by the nominee shall not invalidate the election. Notice to nominee.

(5) Any person who is nominated may refuse to become a candidate, and he shall be deemed not to have been so nominated and his name shall not be included in the list of candidates if he notifies the secretary in writing of his refusal within four days after the mailing of such notice to him. Declining nomination.

(6) If the number of persons who remain as candidates is not greater than the number of benchers to be elected they shall be elected benchers. R.S.O. 1927, c. 192, s. 13. Election by acclamation.

14. In case a poll is necessary the secretary shall forthwith, after the time for receiving notice of refusal to be a candidate has expired, send to each member of the Bar, whose name is on the list of persons entitled to vote, if his residence is known to the secretary, one copy of the form of voting paper with a list of the candidates which shall indicate by asterisks and a footnote those whose term of office as benchers is about to expire. R.S.O. 1927, c. 192, s. 14. Proceedings in case of poll.

15. The votes shall be given by closed voting papers, (Form 1) delivered at the office of the secretary or sent by mail to him so as to be received thereat not later than the second Wednesday of April of the year of the election. R.S.O. 1927, c. 192, s. 15. Voting papers.

16. Beginning on the first Thursday after the second Wednesday in April and proceeding continuously thereafter, except on holidays, the voting papers shall be opened by the secretary in the presence of the treasurer or the person appointed to assist him, and of the scrutineers who shall scrutinize and count the votes and keep a record thereof in a book to be provided by the Society. R.S.O. 1927, c. 192, s. 16. When voting papers to be delivered.

17. A vote cast for any person who is not upon the list of candidates or who is ineligible to be a bencher or who is a bencher *ex-officio* shall be null and void, and the election shall be declared as if such vote had not been cast. R.S.O. 1927, c. 192, s. 17. Counting the votes.

18. In the event of a voter placing more than thirty names on his voting paper the first thirty only shall be counted, notwithstanding that any of the thirty persons so named may be ineligible for election or is not a candidate or is an *ex officio* bencher. R.S.O. 1927, c. 192, s. 18. Void vote.

Equality of
votes.

19. If an equality of votes between two or more persons leaves the election of one or more benchers undecided the scrutineers shall forthwith put into a ballot-box a number of papers with the names of the candidates having such equality of votes written thereon, one for each candidate, and the secretary shall draw by chance from the ballot-box, in the presence of the scrutineers, one or more of such papers sufficient to make up the required number, and the persons whose names are upon the papers so drawn shall be declared to have been elected as benchers. R.S.O. 1927, c. 192, s. 19.

Who to be
declared
elected.

20.—(1) The thirty persons who have the highest number of votes shall be declared by the secretary to have been elected as benchers for the ensuing term of five years.

Where
ex officio
bencher is
elected.

(2) If among the thirty persons who have the highest number of votes there is any bencher who by virtue of such election becomes *ex officio* a bencher, the scrutineers shall so report and, subject to the provisions of section 17, the thirty other persons having the highest number of votes shall be declared to have been elected as benchers for the ensuing term of five years. R.S.O. 1927, c. 192, s. 20.

Who may
be present at
the counting
of votes.

21. Any person entitled to vote at any such election shall be entitled to be present at the counting of the votes. R.S.O. 1927, c. 192, s. 21.

When elec-
tion not held
at proper
time.

22. If from any cause any election provided for by this Act is not held as hereinbefore provided the benchers in convocation shall make provision for holding the same and fix the dates for the nomination and the other proceedings for taking, counting and recording the votes thereat and declaring the result thereof, and such proceedings shall, so far as practicable, be conformable with those provided by this Act. R.S.O. 1927, c. 192, s. 22.

Declaration
of result.

23. Upon the completion of the scrutiny and counting of the votes the secretary shall forthwith declare the result of the election as certified by the scrutineers and report the same to the Society, and shall cause the names of the persons elected to be published in the next issue of the *Ontario Gazette*. R.S.O. 1927, c. 192, s. 23.

Publication.

Regulations
for elections
and remun-
eration to
scrutineers.

24. The benchers may make such regulations as they consider expedient, not contrary to the provisions of this Act, for regulating the procedure under the preceding sections, and for the remuneration of the scrutineers. R.S.O. 1927, c. 192, s. 24.

25. Until after all petitions in respect to the election have been decided the voting papers relating to the election shall not be destroyed, but together with all other papers in connection with the election, shall be retained by the secretary. Preservation of voting papers.
R.S.O. 1927, c. 192, s. 25.

26. No person shall sign the name of any other person to a voting paper, or alter, or add to, or falsify, or fill up any blank in a voting paper signed by another person, or deliver or cause to be delivered, or send or cause to be sent, by post or otherwise, to the secretary, a false voting paper or a voting paper which has been added to, or falsified or in which a blank has been filled up after the same was signed. False voting.
R.S.O. 1927, c. 192, s. 26.

27. Where the office of secretary is vacant or if the secretary is unable from any cause to act at or in connection with an election, the treasurer shall appoint under his hand some other person to act as secretary *pro tempore*, and the person so appointed shall perform all the duties of the secretary, as prescribed by this Act. Absence of secretary. R.S.O. 1927, c. 192, s. 27.

28. The elected benchers shall take office at the first meeting following their election, and, subject to the provisions of this Act, shall hold office until their successors are elected. Term of office of benchers.
R.S.O. 1927, c. 192, s. 28.

29.—(1) The seat of a bencher, other than an *ex officio* bencher, who has failed to attend the meetings of the benchers for nine consecutive meetings shall at the expiration of that period *ipso facto* become vacant. Vacation of seat for non-attendance.

(2) The right of any bencher who is such *ex officio* by reason of having been elected at four quinquennial elections, to sit and vote at meetings of the benchers, shall be suspended if and while he is in default in payment of any fees to the Society. Suspension of certain ex officio benchers for non-payment of fees. R.S.O. 1927, c. 192, s. 29.

30. The benchers may appoint a committee to inquire with respect to the due election of any bencher whose election may be petitioned against by any member of the Bar who voted at the election, and, after such inquiry, to report such bencher as duly or not duly elected or qualified according to the fact, and, if necessary, to report the name of the candidate having the highest number of votes next after the candidate declared elected who had the lowest number of votes, in lieu of the person reported not duly elected or qualified, and, on the confirmation of the report by the benchers, other than persons petitioned against, present at any meeting called for that Committee on election petitions.

purpose, the person so reported in lieu of the person petitioned against shall be deemed to be the duly elected and qualified benchers. R.S.O. 1927, c. 192, s. 30.

Time for
filing election
petition.

Contents of
petition.

31—(1) A petition shall not be entertained unless it is filed with the secretary before the 10th day of May next succeeding the election, and contains a statement of the grounds on which the election is disputed, nor unless a copy thereof is served upon the benchers whose election is disputed before the 15th day of May, and no ground not mentioned in the petition shall be entertained on the hearing thereof.

Hearing
petitions.

(2) The benchers, or the committee appointed for that purpose, shall before the last day of the said month, appoint a day for the hearing of the petition and give notice of such day to the petitioner and to the person whose election is disputed, and all such petitions shall be finally disposed of within one month from the date of filing. R.S.O. 1927, c. 192, s. 31.

Deposit for
costs.

Power of
committee
as to costs.

32. The petitioner shall deposit with the secretary \$100 to meet any costs which the benchers petitioned against may in the opinion of the committee before which the petition is heard be put to; and the committee shall have power in the event of such petition being dismissed to award such a sum to be paid to the benchers petitioned against as in their opinion is just and shall have power in their discretion, in the event of it being decided that such benchers was not duly elected or qualified, to award costs to the petitioner, and the costs so awarded shall be recoverable in any court of competent jurisdiction. R.S.O. 1927, c. 192, s. 32.

Election of
treasurer.

Duration of
his office.

33.—(1) The benchers shall, at their first meeting after the election, elect one of their number as treasurer, who shall be the president of the Society, and shall hold office until the appointment of his successor, and the election of treasurer shall take place in each year thereafter at such time as may be appointed by the rules of the Society.

Retiring
treasurer
eligible.

(2) The retiring treasurer shall be eligible for re-election. R.S.O. 1927, c. 192, s. 33.

Vacancies
among
benchers—
how filled.

34. In case of failure to elect the requisite number of duly qualified benchers under the provisions of this Act, or in case of any vacancy owing to the death or resignation of any benchers, or to any other cause, the remaining benchers shall, at the next regular meeting or at a meeting specially called for the purpose, supply the deficiency in the number of benchers, or fill the vacancy by electing any person or persons duly qualified under the provisions of this Act, and the person or persons so elected shall hold office until the next quinquennial election. R.S.O. 1927, c. 192, s. 34.

POWERS OF THE BENCHERS.

35. The benchers may make rules for the government of the Society, and other purposes connected therewith. R.S.O. 1927, c. 192, s. 35; 1934, c. 54, s. 14 (2). Power to make rules.

36. The benchers may by rule fix or change the dates for the doing of any act, or the giving of any notice which by this Act is to be done or given in or with reference to any term, but no such rule shall have the effect of prolonging the term of office of any elected bencher. R.S.O. 1927, c. 192, s. 36. Changing dates for doing acts or giving notices.

37. On the hearing of an election petition or upon any inquiry by a committee the benchers or committee shall have power to examine witnesses under oath, and a summons under the hand of the treasurer, or under the hands of three benchers, for the attendance of a witness shall have all the force of a subpoena, and any witness not attending in obedience thereto shall be liable to attachment in the Supreme Court. R.S.O. 1927, c. 192, s. 37. Power to summon and examine witnesses.

38. The benchers may appoint such officers and servants as they may deem necessary for the purposes of the Society. R.S.O. 1927, c. 192, s. 38. Appointment of officers.

39. The benchers may appoint examiners to conduct the examination of students-at-law and of persons applying to be called to the Bar or to be admitted as solicitors. R.S.O. 1927, c. 192, s. 39. Appointment of examiners.

40. The benchers may make rules for the improvement of legal education including the establishment and maintenance of a law school; appoint a dean and lecturers with salaries; impose fees and prescribe rules for the attendance of students and others at lectures and for examinations thereon, but not so as to reduce the number of years prescribed by statute for call to the Bar or admission as solicitor, and may establish scholarships and prizes. R.S.O. 1927, c. 192, s. 40. Legal education.

41.—(1) The benchers may make such rules as they consider necessary for conducting the examination of persons applying to be called to the Bar and may call and admit to the practice of the law as a barrister any person duly qualified to be so called and admitted according to the provisions of law and the rules of the Society. Call to the Bar.

(2) The benchers may make rules providing for the admission of women to practise as barristers and solicitors. R.S.O. 1927, c. 192, s. 41. Admission of women.

Rules for
examination
of candidates
for admission
as solicitors.

42.—(1) The benchers may make such rules as they consider necessary for conducting the examination of persons applying to be admitted as solicitors, touching the articles and service, and the certificates required to be produced by them before their admission, and as to the fitness and capacity of such persons to act as solicitors. R.S.O. 1927, c. 192, s. 42 (1); 1934, c. 54, s. 14 (3).

Suspending
decision.

(2) Where it appears to the benchers expedient for purposes of further inquiry or investigation, they may suspend, for a period not exceeding twelve months, their final decision in respect to granting or refusing a certificate. R.S.O. 1927, c. 192, s. 42 (2).

Rules and
regulations
to meet
special cir-
cumstances.

43. The benchers may make rules and regulations, not contrary to law, and dispense therewith from time to time to meet the special circumstances of any special case respecting,—

Admission
of students
and call of
barristers.

(a) the admission of students-at-law, the periods and conditions of study, the call or admission of barristers to practise the law, and all other matters relating to the discipline and honour of the Bar;

Articled
clerks and
admission
of solicitors.

(b) the service of students-at-law, the period and conditions of such service, and the admission of solicitors to practise in the courts, and all other matters relating to the discipline and conduct of solicitors and students. R.S.O. 1927, c. 192, s. 43.

Powers of
benchers to
suspend,
disbar or
expel in case
of mis-
conduct.

44. Where a barrister, solicitor, or student-at-law is found by the benchers, after due inquiry by a committee of their number or otherwise, guilty of professional misconduct, or of conduct unbecoming a barrister, solicitor or student-at-law, the benchers may disbar any such barrister, or suspend him from practising as a barrister for such time as they may deem proper; may resolve that any such solicitor is unworthy to practise as a solicitor or that he should be suspended from practising for a period to be named in the resolution; may expel from the Society, and the membership thereof, such student and strike his name from the books of the Society; or may refuse either absolutely or for a limited period to admit such student to the usual examinations, or to grant him the certificate of fitness necessary to enable him to be admitted to practice. R.S.O. 1927, c. 192, s. 45.

Barrister's
privileges
to cease
when he is
disbarred.

45. Upon a barrister being disbarred, all his rights and privileges as a barrister shall thenceforth cease and determine, or, in case he is suspended, he shall, during the period of his suspension, possess no rights or privileges as a barrister, and notice of his being disbarred or suspended shall forthwith

be given by the secretary to the senior registrar of the Supreme Court. R.S.O. 1927, c. 192, s. 46.

46. Where it has been resolved by the benchers that a solicitor is unworthy to practise a copy of the resolution shall forthwith be communicated to the senior registrar of the Supreme Court. R.S.O. 1927, c. 192, s. 47. Resolution of benchers.

47. Upon receipt of any notice under section 45 or 46 an order shall be drawn up by the senior registrar of the Supreme Court without any formal motion striking such barrister or solicitor off the roll or suspending him, as may have been determined by the benchers, but any such order may be set aside or varied at any time by the Court. R.S.O. 1927, c. 192, s. 48. Suspending or striking off rolls.

48. Any powers which the visitors of the Society may have in matters of discipline are hereby vested in the benchers, and the powers conferred upon the benchers by sections 44 to 47 may be exercised by them without reference to or the concurrence of the visitors. R.S.O. 1927, c. 192, s. 49. Powers of visitors as to discipline vested in the benchers.

COUNTY LAW LIBRARIES.

49. The benchers may make regulations for promoting the efficiency of county law libraries, and may prescribe and enforce remedies for the violation thereof, and may by resolution of convocation cause to be dissolved any county law library association which neglects or refuses to comply with such regulations. R.S.O. 1927, c. 192, s. 50. Rules as to county law libraries.

LAW BENEVOLENT FUND.

50. The benchers may establish a fund for the benefit of the widows and orphans of barristers and solicitors, to be called "The Law Benevolent Fund," and may make all necessary rules and regulations for the management and investment of such fund, and the terms of subscription and appropriation thereof, and the conditions under which such widows and orphans shall be entitled to share in such fund. R.S.O. 1927, c. 192, s. 51. Widows' and orphans' fund.

REPORTERS.

51.—(1) The benchers may appoint such person or persons, being members of the Society of the degree of barrister, as they may think proper to report and edit the decisions of the courts. Appointment of law reporters.

(2) Such person or persons shall hold office at the pleasure of the benchers, and shall be amenable to them in convoca- Tenure of office.

tion, for the correct and faithful discharge of their duties according to such regulations as the benchers may make in respect thereof.

Benchers to make regulations regarding the reports.

(3) The benchers shall make regulations for printing and publishing the reports of such decisions, and the distribution of the reports and the price and mode of issuing the same, and all such other regulations in respect thereto as they may at any time consider necessary, and any profits arising from the reports shall form part of the general funds of the Society.

Salaries of reporters.

(4) The benchers shall determine the salaries to be allowed for such reporting and editing and shall pay the same out of the general funds of the Society. R.S.O. 1927, c. 192, s. 52.

REVENUE AND EXPENDITURE.

Appropriation of certain fees.

52. The fees payable by barristers on call to the Bar and annually, and by solicitors on admission, and for the annual certificate to practise, and by students on admission as such, and by them and others on examinations and attendance on lectures and readings, shall be paid into the general funds of the Society, and shall be such as the benchers may prescribe. R.S.O. 1927, c. 192, s. 53.

Power of benchers to fix limits of financial year.

53.—(1) The benchers may from time to time fix and adjust by rule the limits of the Society's financial year and shall cause the revenues and expenditures of the Society for each financial year as so fixed to be duly audited by an auditor appointed by the benchers to audit the accounts and report upon the finances of the Society.

Statement to be sent to members.

(2) The statement, together with the report of the auditor, shall be furnished annually, within three months after the close of the financial year, to every member of the Society entitled to vote at an election of benchers. R.S.O. 1927, c. 192, s. 54.

SCHEDULE.

FORM 1.

(Section 15.)

VOTING PAPER.

Law Society Election, 19 .

The appointed scrutineers for this election are Mr. of
 , and Mr. of

I, , of the in the of
 , Barrister, do hereby declare—

1. That the signature hereto is in my proper handwriting.
2. That I vote for the following persons as Benchers of the Law Society:

A.B., of , in the of
 C.D., of , in the of
 etc. etc.

3. That I have signed no other voting paper at this election.

4. That this voting paper is signed on the day of the date thereof.

Witness my hand, this day of , 19 .

R.S.O. 1927, c. 192, Sched. Form 1.